IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.54 of 2006
Date of decision:22.12.2006

M/s. Neeldhara Weaving Factory, Ludhiana

....Petitioner

versus

Director General of Foreign Trade, New Delhi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Jagmohan Bansal, Advocate, for the petitioner.
Mrs. Daya Chaudhary, Assistant Solicitor General of India, for the respondents.

JUDGMENT:

This writ petition seeks quashing of order dated 4.5.2005, Annexure P.14 passed by the appellate authority under the provisions of the Customs Act, 1962 (for short, 'the Customs Act'). Show cause notice dated 9.8.2000 was issued to the petitioner and its partners under section 4L of the Import and Exports (Control) Act, 1947 (for short, 'the 1947 Act') read with Section 20(2) of the Foreign Trade (Development and regulation) Act, 1992 (for short, 'the 1992 Act') for taking action for failure to fulfil export obligation under Advance Licence No.3071782 dated 27.2.1984 for Rs.5,00,000/- and Advance Licence No.3072471 dated 22.9.1984 for Rs.5,00,000/-. Allegations in the notice are that exemption benefit was allowed for import of 24 M.T. subject to export obligation of exporting 3000 Pcs Acrylic Children T.Shirts, 35000 Pcs. Acrylic Gents T.Shirts weighing 20 M.T. for a FOB value of Rs.11,92,500/- within the stipulated period. Second instalment of licence was issued bearing No.3072471 dated 22.9.1984 for Rs.5 lacs for import of 25 MT of Acrylic Fibre man-made with both value and quantity as limiting factor. The duty exemption benefit was allowed for import of 24 MT only subject to export obligation of 3000 Pcs. Acrylic Children T.Shirts and 35000 Pcs. Acrylic Gents T.Shirts weighing 20 MT for FOB value of Rs.11,92,500/-.

The petitioner failed to submit documents towards discharge of export obligation in respect of second licence inspite of extension and after issuing show cause notice dated 25.5.1989, the petitioner was debarred from receiving the import Licenses/CCPs and allotment of imported goods from the STC/MMTC or any other canalizing agency as well as import under OGL for 5 licensing periods viz., April 89-March 90 to April 93 – March 94 vide Adjudicating Order No.5/2/AM'90/ECA/LDH/1039-1043 dated 21.9.1989 against which appeal of the petitioner was dismissed on 3.6.1994 by the Additional DGFT. It was alleged that the default of the petitioner attracted penal action under section 40-I of the 1947 Act read with Section 20(2) of the 1992 Act.

Stand of the petitioner was that the petitioner had already been penalised by the order of debarring; it had imported 20 MT of material against which export of 16 MT goods of FOB value was required and the petitioner had already exported 10425.701 kgs. of goods for Rs.11,92,500/- and shortfall was only to the extent of 5574.300 kgs.. The adjudicating authority recorded following finding:-

> ".....They also failed to furnish the export proceeds realization certificate and export DEEC Book showing entries of the exports claimed to have been made by them. It is also observed that all such exports have been made after the expiry of export obligation period. Therefore, in view of the above situation such exports cannot be considered towards discharge of export obligation. The Noticee firm also failed to get their case regularized by paying amount equivalent to the Customs duty exemption enjoyed by them alongwith interest. After obtaining the licence on the given conditions and after making the imports there against, it was expected from the noticee to meet the dead line of export and to take care of all his obligation regarding fulfillment of the exports or paying the customs duty etc. in case of default. But they did not do so even after so many years. I am unable to accept the reasoning given by the noticee firm that the Show Cause Notice was bad in law because they had already been penalized by way of debarment. The debarment of the noticee was ordered under the Imports (Control) Order, 1955 whereas the present proceedings are under the Imports and Exports (Control) Act, 1947. Both the proceedings are independent in nature and there is no double jeopardy as claimed by the noticee."

After recording the above findings, following operative order was passed:-

> ".....Therefore, the undersigned in exercise of the powers vested in me under the aforesaid sections of the Imports and Exports (Control) Act, 1947 and Foreign Trade (Development and Regulation) Act, 1992 after a careful consideration of the case and by keeping in view the facts and circumstances of the case impose a penalty of Rs.5,00,000/- (Rs. Five lacs only) on M/s Neeldhara Weaving Factory, K-2, Textile Colony, Indl. Area A, Ludhiana. and its partners viz. Sh. Deena Nath Aggarwal, Sh. Surinder Aggarwal, Smt. Indu Agarwal, and Smt. Sunita Aggarwal. The above penalty would be payable by the noticee company and its partners named above in addition to their liability for the payment of customs duty, interest thereon as per relevant provision of the Exim Policy/Procedure."

The petitioner preferred an appeal which has been dismissed. Relevant operative part of the order is as under:-

> "4. The appellant firm was given an opportunity of personal hearing and Shri Kewal Aggarwal, stated to be the Proprietor of the firm and Shri Manjit Sharma his Assistant appeared before me for personal hearing on 12.4.2005. Shri Kewal Aggarwal though claimed to have completed the export obligation, but have not produced the original export documents neither with the appeal nor during the personal hearing and is expressing his willingness to pay Customs Duty. However, he was reluctant on payment of interest and requested for waiver. On the one hand he is claiming that he has completed the export obligation and on the other hand he is willing to pay Customs Duty on the material imported duty free. Hence, it is presumed that the appellant firm has not completed the export obligation. Under the circumstances, I have no reason to interfere with the orders of the Adjudicating Authority and in view of powers vested in me in terms of the provisions of Section 15 of the Foreign Trade (Development & Regulation) Act, 1992, the following order is made:-
>
> No.11/88/2003-04/ECA-1 May 4, 2005
>
> ORDER
> The appeal is dismissed."

Learned counsel for the petitioner submitted that order of imposition of penalty was after 15 years and was, thus, liable to be set aside on that ground alone.

Learned counsel for the petitioner relied upon following judgments in support of his submission that the impugned order is liable to be quashed on account of delay:-

(i) **Parekh Shipping Corporation v. Assistant Collector of Cus.,Bombay**, 1995(80) ELT 781 (Bom.)

ii) **Government of India v. Citedal Fine Pharmaceuticals,** 1989 (42) ELT 515 (SC).

Iii) W**ilco and Company v. Union of India**, 2003(151) ELT 49 (Mad.)

(iv) **Commissioner of Trade Tax, Lucknow v. Kanhai Ram Thekedar,** (2005) 4 Revenue Cases 759.

The undisputed facts in the present case are that the petitioner was granted an Advance Import Licence to import Acrylic fibre with an obligation to export garments manufactured therefrom. The licence permitted the petitioner to import 25 MT of Acrylic fiber of CIF value Rs.5 lacs. Corresponding export obligation was for 3000 pcs. of Acrylic Children T.Shirts, 35000 Pcs. of Acrylic Gents T.Shirts weighing 20 MT for FOB value of Rs.11,92,500/-. This licence was granted on 22.9.1984. Against the licence, the petitioner could import only 20 MT of Acrylic fibre, corresponding his export obligation was also reduced. As the period for fulfillment of export obligation had expired, the petitioner sought extension thereof, which was granted vide letter dated 18.3.1988, for a period of three months. During the extended period, the petitioner could fulfill 28 % of the export obligation. Further extension for fulfillment of export obligation was rejected. Vide order dated 13.5.1988, the petitioner was declared as a defaulter thereby dis-entitling him from receiving any Licence Release Order. Under the export policy, bank guarantee and undertaking given by the petitioner was also enforced. Thereafter, the matter remained in dispute regarding payment of customs duty which also attained finality on 29.9.1991. It was for the first time on 9.8.2000 that the respondent No.2 issued issued show cause notice to the petitioner for levy of penalty under

Section 4L of the Import and Exports(Control), Act,1947 (for short 'the 1947 'Act') proposing levy of penalty for default in fulfilling the export obligation. Vide order dated 30.6.2003, penalty of Rs. 5 lacs was levied on the petitioner for violation of provisions of the 1947 Act. In appeal also, the petitioner failed.

The petitioner having committed the default way back in 1988-89 in not fulfilling his export obligation in toto, the authorities could initiate penalty proceedings against the petitioner only within a reasonable time. It is not in dispute that a show cause notice for levy of penalty was issued for the first time on 9.8.2000. Still the matter remained pending and the penalty was imposed, nearly 3 years after the show cause notice, on 30.6.2003. The judgments referred to above as cited by the petitioner do support the proposition that the exercise of power has to be within a reasonable time, where no time limit prescribed under the statute for exercise thereof. Respondents could not justify the period of delay in issuing show cause notice to the petitioner for levy of penalty.

In **Government of India v. Citedal Fine Pharmaceuticals**, 1989(42) ELT 515(SC), it was observed as under:-

> "6. Learned counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

In **State of Gujarat v. Patel Raghav Natha and others**, AIR 1969 SC 1297, the Hon'ble Supreme Court considered the exercise of revisional power under Section 211 of the Bombay Land Revenue Code 1879. It was observed:-

> "11. The question arises whether the Commissioner can revise an order made under section 65 at any time. It is true that there is no period of limitation prescribed under Section 211, but it seems to us plain that this power must be exercised in reasonable time and the length of the reasonable time must be determined by the facts of the case and the nature of the order which is being revised.
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> 12. It seems to us that Section 65 itself indicates the length of the reasonable time within which the Commissioner must act under Section 211. Under Section 65of the Code if the Collector does not inform the applicant of his decision on the application within a period of three months the permission applied for shall be deemed to have been granted. This section shows that a period of three months is considered ample for the Collector to make up his mind and beyond that the legislature thinks that the matter is so urgent that permission shall be deemed to have been granted. Reading Sections 211 and 65 together it seems to us that the Commissioner must exercise his revisional powers within a few months of the order of the Collector. This is reasonable time because after the grant of the permission for building purposes the occupant is likely to spend money on starting building operations at least within a few months from the date of the permission. In this case, the Commissioner set aside the order of the Collector on October 12, 1961 i.e., more than a year after the order, and it seems to us that this order was passed too late."

In **Ibrahimpatnam Taluk Vyavasaya Collie Sangham**, AIR 2003 SC 3592, while referring to section 50-B(4) of the Andhra Pradesh (Telangana Area) Tenancy and Agricultural Lands Act,1950, expression "at any time" for exercise of suo motu power was interpreted to mean within "reasonable time". Relevant observations are as under:-

> "9. ...Use of the words "at any time" in sub-section(4) of Section 50-B of the Act only indicates that no specific period of limitation is prescribed within which suo motu power could be exercised reckoning or starting from a particular date advisedly and contextually. Exercise of suo motu power depended on facts and circumstances of each case. In cases of fraud, this power could be exercised within a reasonable time from the date of detection or discovery of fraud. While

exercising such power, several factors need to be kept in mind such an effect on the rights of the third parties over the immovable property due to passage of considerable time, change of hands by subsequent bona fide transfers, the orders attaining finality under the provisions of other Acts (such as Land Ceiling Act). Hence, it appears without stating from what date the period of limitation starts and with what period the suo motu powers is to be exercised. In sub-section (4) of Section 50-B of the Act, the words "at any time" are used so that the suo motu power could be exercised within reasonable period froj the date of discovery of fraud depending on facts and circumstances of each case in the context of the statute and nature of rights of parties. Use of the words "at any time" in sub section (4) of Section 50-B of the Act cannot be rigidly read letter by letter. It must be read and construed contextually and reasonably. If one has to simply proceed on the basis of dictionary meaning of words "at any time", the suo motu power under sub section (4) of section 50-B of the Act could be exercised even after decades and then it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties, that too, over immovable properties. Orders attaining finality and certainty of the rights of the parties accrued in the light of the orders passed must have sanctity. Exercise of suo motu power "at any time" only means that no specific period such as days, months or years are not prescribed reckoning from a particular date. But that does not mean that "at any time" should be unguided and arbitrary. In this view, "at any time" must be understood as within a reasonable time depending on the facts and circumstances of each case in the absence of prescribed period of limitation.

10. This Court in a recent decision in D. Saibaba v. Bar Council of India and another, (2003) 6 SCC 186, after referring and quoting passages from Justice G.P. Singh's Principles of Statutory Interpretation observed that "Reading word for word and assigning a literal meaning to Section 48-AA would lead to absurdity, futility and to such consequences as Parliament could have never intended. The provision has an ambiguity and is capable of being read in more ways than one. We must, therefore, assign the provision a meaning -and so read it- as would give life to an otherwise lifeless letter and enable the power of review conferred thereby being meaningfully availed and effectively exercised."

11. In Principles of statutory Interpretation(8th Edn., 2001), the author has stated thus:-

> "It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts

> with the premise that the words are plain, which is itself a conclusion reached after constructing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed."

The authority has stated again as under:-

> "In selecting out of different interpretations ' the Court will adopt that which is just,reasonable and sensible rather than that which is none of those things', as it may be presumed 'that the legislature should have used the word in that interpretation which least offends our sense of justice."

12. The learned single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words 'at any time' in sub section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is 'reasonable time' has to be determined on the facts of each case."

In **State of HP and others v. Rajkumar Brijender Singh and others**, AIR 2004 SC 3218, referring to Section 20 of the HP Ceiling on Land Holdings Act, 1973, conferring suo motu power on Financial Commissioner, interpreting the words "at any time", it was held that such power had to be exercised within reasonable time. The relevant observations are:-

> "6. .. It is true that sub-section (3) provides that such a power may be, exercised at any time but this expression does not mean there would be no time limit or it is in infinity. All that is meant is that such powers should be exercised within a reasonable time. No fix period of limitation may be laid but unreasonable delay in exercise of the power would tend to undo the things which have attained finality. It depends on the facts and circumstances of each case as to what is the reasonable time within which the power suo motu action could be exercised. For example in this case, as the appeal had been withdrawn but the Financial Commissioner had taken up the matter in exercise of his suo motu power, well it could be open for the State to submit that the facts and circumstances were such that it would be within reasonable

> time but as we have already noted the order of the Collector which has been interfered with was passed in January 1976. The learned counsel for the appellant was not able to point out such other special facts and circumstances by the reason of which it could be said that exercise of suo motu power after 15 years of the order interfered with was within a reasonable time. That being the position in our view, the order of the Financial Commissioner stands vitiated having been passed after a long lapse of 15 years of the order which has been interfered with. Therefore, while holding that the Financial Commissioner would have power to proceed suo motu in a suitable case even though an appeal preferred before lower appellate authority is withdrawn may be by the State. Thus, the view taken by the High Court is not sustainable..."

In **Parekh Shippling Corporation's** case (supra), show cause notice issued for short landing more than 12 years after the relevant date was set aside.

In **Wilco and Company's** case (supra), Madras High Court had set aside notice for imposition of penalty issued after six years of cause of action.

In **Kanhai Ram Thekedar's** case (supra), the Hon'ble Supreme Court set aside the demand for payment of interest four years after the assessment order being not within the reasonable time.

Accordingly, we do not find any justification for levy of penalty after 14 years of the default. The contention of the counsel for the revenue to the effect that the petitioner having committed default cannot be permitted to raise these technical pleas is to be noticed and rejected, being without any merit.

In view of the above discussion, the writ petition is allowed, impugned orders Annexures P-13 and P-14 are quashed with no order as to costs.

(Adarsh Kumar Goel)
Judge

December 22, 2006 (Rajesh Bindal)
'gs' Judge